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| 10/785,434 | 02/24/2004 | David Arthur Welch | WELCH 4 | 8500 |
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| DUFT BORNSEN & FISHMAN, LLP | | | EXAMINER | |
| 1526 SPRUCE STREET | | | KEEHN, RICHARD G | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| Office Action Summary | Application No. 10/785,434 | Applicant(s) WELCH, DAVID ARTHUR |
| | Examiner Richard G. Keehn | Art Unit 2152 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

- 1) Responsive to communication(s) filed on 18 April 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-145/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Claims 1-20 have been examined and are pending.

Response to Arguments

1. Applicant's arguments filed 4/18/2008 with respect to the primary prior art reference Lindskog et al. have been fully considered but they are not persuasive. In response to Applicant's argument that Lindskog et al. do not teach all of the limitations in Claim 1, Examiner reminds Applicant that the prior art reference Lindskog et al. was only used to disclose the following limitations, and that said limitations are disclosed as indicated:

- a control system (Lindskog et al. – Column 3, lines 9-11 recite the control system, which is composed of a plurality of control agents); and
- a plurality of peer communication devices, each communication device, responsive to handling telecommunications data, collects performance data and transfers the performance data to the control system (Lindskog et al. – Column 3, lines 11-13 recite the telecommunications peer devices known as performance agents, which communicate their performance data to the control agents, the collection of which comprise the control system).

Lindskog et al. was used *in combination* with another prior art reference to form a rejection based on 35 U.S.C. 103(a). However, Applicant's arguments with respect to claim 1 are moot in view of the new grounds of rejection.

2. In response to applicant's argument that the City University reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, although Examiner believes the limitations disclosed by the City University reference are pertinent to the particular problem Applicant is concerned about, and that those problems and concerns are common to many fields of endeavor, the argument is moot in view of the new ground(s) of rejection. Examiner has substituted the City University reference with a prior art references. Consequently, this office action is made non-final.

Claim Objections

3. Claims 7 and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Parent Claims 1 and 11 state "**each communication device**, responsive to receipt of the performance

file, processes the performance file to compare its performance to the performance of the other peer communication devices." Claims 7 and 17 offer no further limitation, as they only recite "wherein each communication device processes the performance file by comparing its performance data with performance data of the other peer communication devices."

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code 103 (a) not included in this action can be found in a prior Office action.
5. "When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under §103." See *KSR Intern. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742 (2007).
6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 7,203,655 B2 (Herbert et al.), and further in view of US 2003/0083846 A1 (Curtin et al.).

As to Claims 1 and 11, Herbert et al. discloses an invention substantially as claimed, including a telecommunication system and method configured to provide distributed system monitoring, the telecommunication system comprising:

a control system (Herbert et al. – Figure 1, item 120 recites the central processing computer); and

a plurality of peer communication devices, each communication device, responsive to handling telecommunications data [*sic*] (Herbert et al. – Column 3, lines 42-47 recite the Agents with their workstations; Column 4, lines 48-48 recite the contacts in a telecommunications network; Column 4, lines 57-59 recite said contacts monitored for performance data);

the control system, responsive to receipt of the performance data from the communication devices, processes the performance data from each of the communication devices to generate a performance file that indicates the performance of each of the communication devices, and transfers the performance file to each of the communication devices (Herbert et al. – Column 4, lines 1-3, and 10-22 recite the PSS which uses the performance data from each of the communication devices to generate reports that indicate individual and group performance analysis results and provides that information to the agents); and

each communication device, responsive to receipt of the performance file, processes the performance file to compare its performance to the performance of the other peer communication devices (Herbert et al. – Column 4, lines 41-42 and Column

7, lines 63-64 recite the agents using and configuring the performance report format for comparison of aforementioned individual and group performance metrics).

Herbert et al. disclose the communication device directly collecting performance data and sending directly to the control system, but rather these limitations are indirectly performed by the ACD. Therefore Herbert et al. do not explicitly disclose, but Curtin et al. disclose an invention substantially as claimed, including each communication device collects performance data and transfers the performance data to the control system (Curtin et al. – Page 1, ¶ [0023] recites the gathering and sending of performance data by each client; Figure 1 shows the data is sent to the control system).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine each communication device collects performance data and transfers the performance data to the control system taught by Curtin et al., with the collection of, and sending of, performance data to the control system taught by Herbert et al.

The ACD in the Herbert reference is the gatekeeper controlling all collection and reporting to the control system for the plurality of agent workstations. One of ordinary skill in the art at the time the invention was made would recognize this creates at least two problems to solve. Namely that (1) if the ACD fails, the entire reporting system fails; and (2) as workstations are replaced with newer technology, the ACD interface to said replaced workstations may also need to be modified, eventually to a point where modification is no longer possible. Hence one of ordinary skill in the art at the time the invention was made would have been motivated to place the function of collection and

reporting to the controller onto the individual agents workstations so that as workstations are replaced, the ACD, as taught in Herbert et al., would not need to be redesigned or modified; and if a single collection / reporting agent fails, the whole system does not fail.

As to Claims 2 and 12, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunication system and method of claims 1 and 11 wherein each communication device processes the performance file to attempt to improve its performance (Herbert et al. – Column 1, lines 23-29 recite agent performance improvement; Column 7, lines 63-64 recite the agent configuring the performance reports).

As to Claims 3 and 13, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunication system and method of claims 1 and 11, wherein one of the communication devices monitors the one communication device to detect a fault (Herbert et al. – Column 6, lines 25-35 recite the agent detecting less than respective performance).

As to Claims 4 and 14, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunication system and method of claims 3 and 13 wherein the one communication device, responsive to detection of the fault, processes the performance file to identify at least one recovery

action and performs the at least one recovery action (Herbert et al. – Column 1, lines 23-32 recite the agent performing the recovery action of goal setting to improve job satisfaction).

As to Claims 5 and 15, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunications system and method of claims 4 and 14 wherein the one communication device determines if the fault is cured by the at least one recovery action, generates a report of the fault if the fault is not cured by the at least one recovery action, and transfers the report of the fault to the control system (Curtin et al. – Page 1, ¶ [0023] recites the client computer sending evaluation report; Figure 1 shows that data being sent to the control system).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 6 and 16, the combination of Herbert et al. and Curtin et al. and discloses an invention substantially as claimed, including the telecommunications system and method of claims 5 and 15 wherein the control system, responsive to receipt of the report of the fault, identifies at least one recovery action, and performs the at least recovery action on the one communication device (Herbert et al. – Column 4, lines 1-9 recite a number of corrective recovery actions the control system can implement on the agent, including skill planning and scheduling).

As to Claims 7 and 17, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunication system and method of claims 1 and 11 wherein each communication device processes the performance file by comparing its performance data with performance data of the other peer communication devices (Herbert et al. – Column 4, lines 41-42 and Column 7, lines 63-64 recite the agents using and configuring the performance report format for comparison of aforementioned individual and group performance metrics).

As to Claims 8 and 18, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunications system and method of claims 1 and 11, wherein: each communication device (Curtin et al. – Page 1, ¶ [0023] recites the gathering and sending of performance data by each client) periodically transfers the performance data to the control system (Herbert et al. – Column 3, line 65 recites periodic sending intervals).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 9 and 19, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunications system and method of claims 1 and 11 wherein the performance data includes a performance grade for each communication device (Curtin et al. – Figure 4 recites the grading scale from Excellent to Poor).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claims 10 and 20, the combination of Herbert et al. and Curtin et al. discloses an invention substantially as claimed, including the telecommunications system and method of claims 1 and 11 wherein the performance file includes a list of performance data for each of the plurality of peer communication devices (Herbert et al. – Column 4, lines 1-3, and 10-22 recite the PSS which uses the performance data from each of the communication devices to generate reports that indicate individual and group performance analysis results and provides that information to the agents)

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These include:

- US 2002/0123919 A1 – Brockman et al.
- US 7,120,689 B2 – Gonsalves et al.
- US 2005/0165854 A1 – Burnett et al.
- US 2005/0144274 A1 – Osborn et al.
- US 2005/0086300 A1 – Yeager et al.
- US 6,370,572 B1 – Lindskog et al.
- US 7,136,927 B2 – Traversat et al.
- US 2004/0075690 A1 – Cirne et al.
- US 7,077,806 B2 – Ackermann et al.

- US 6,877,034 B1 – Machin et al.
- US 2004/0236547 A1 – Rappaport et al.
- Non-Patent Literature from City University cited in prior office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-5007. The examiner can normally be reached on Monday through Thursday, 8:30am - 7:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Dohm Chankong/
Examiner, Art Unit 2152